The Premier Automobiles Ltd.

Vs

Kamlekar Shantaram Wadke of Bombay and Others

Automatic Electric Pvt. Ltd.

Vs

Engineering Mazdoor Sabha and Others

Civil Appeals Nos. 922 of 1973

(A. Alagiriswami, P. K. Goswami, N. L. Untwalia JJ)

26.08.1975

JUDGMENT

UNTWALIA, J. –

1. These two appeals filed by special leave of this Court have been heard together because an important question of law as to the jurisdiction of the civil court to entertain the suits of the kinds filed in the two cases is common. Mr. Vimadalal learned Counsel for the appellant company in Civil Appeal No. 922 of 1973 followed by Mr. Nariman, appearing for respondent Nos. 3 to 6 and Mr. A. K. Sen, learned Counsel for the appellant company in Civil Appeal No. 2317 of 1972 argued in support of the ouster of the jurisdiction of the civil court. Mr. Sorabjee, appearing on behalf of the plaintiff-respondents Nos. 1 and 2 vehemently combated the proposition. He was followed by Mr. Som Nath Iyer, learned Counsel for the respondent union in Civil Appeal No. 2317 of 1972. We shall proceed to state the facts of Civil Appeal No. 922 of 1973 first, discuss the point of jurisdiction as also the other points involved in that appeal and then briefly refer to the facts of the other case.

2. The appellant company carries on a big industry and owns several plants. One such plant is situated at Kurla, Bombay. In this plant there is a department known as motor production department. The dispute relates to the workmen of this department. There seems to be three groups of workmen in the department aforesaid. One group was represented of Engineering Mazdoor Sabha - hereinafter called the Sabha Union which is a registered trade union and was once a recognized union of the workmen of the appellant company. Respondents Nos. 1 and 2 who instituted the suit in question in the Civil Court at Bombay are members of this union. Later on the Sabha Union was derecognized and another registered trade union known as Association of Engineering Workers - hereinafter called the Association Union - was recognized by the appellant company. This Association Union, respondent No. 3, was impleaded as defendant No. 2 in the action. Besides the members of these two unions, there are certain workmen who are members of neither.

3. An incentive scheme providing for certain incentive payments to the workmen of the motor production department was introduced by the appellant company in pursuance of agreements entered from time to time between the company and the Sabha Union. The last of such agreements executed between them was dated December 31, 1966. It appears that at the time of the execution of

the last agreement there were 425 workmen in the department. Broadly speaking the incentive scheme was to make extra payments at the rate of 3.5% over the basic production of 650 units upto the target of 900 on every extra production of 25 units. In other words, the workmen were to get 35% more if they produced 900 units in a month of 25 working days. The next target fixed was 1,250 units payable at the rate of 4% per 25 units. In other words, the workmen were to get 35% plus 56% total 91% more if they reached the production target of 1,250 per month. It further appears that after the recognition of the Association Union, 27 more persons who were previously learners were taken in as regular temporary employees in the motor production department on and from September 1, 1970. The strength of the workmen thus according to the case of the appellant and respondent No. 3 went up from 425 to 452, naturally necessitating the revision of the norm and target figures of the incentive scheme. Some sort of arrangement was arrived at between the company and the Association Union which led to a protest by the Sabha Union in October, 1970. Eventually a definite settlement in writing was arrived at between the appellant and respondent No. 3 on January 9, 1971 making the settlement effective from September 1, 1970. The norm figure of 650 units was raised to 725 and the first and the second target figures were raised from 900 to 975 and 1,250 to 1,325 respectively. The rates of incentive payment at 3.5% in the first target and 4% in the second target were retained. Thus the maximum incentive payment of 91% was kept unaltered. Broadly speaking, therefore, the increase of 75 units at every stage of the production was attributable to the addition of the strength of 27 workmen in the motor production department. The members of the Sabha Union, however, felt aggrieved by this, because, they thought the 27 newly added workmen were merely learners and could not be eligible for being taken in the pool of the incentive scheme. It would adversely affect the incentive payment which were to be made to the existing 425 workmen. According to the case of respondents Nos. 1 and 2 they for the first time learnt about the intention of the company to bring about a change in the service conditions when the altered scheme was put on the notice board on March 15, 1971. The two workmen who were the members of the Sabha Union rushed to the court and instituted their plaint on April 8, 1971 in the City Civil Court at Bombay seeking the permission of the court to institute the suit in a representative capacity under Order I, Rule 8 of the Code of Civil Procedure - hereinafter called the Code - representing the workmen who were members of the Sabha Union as also those who were neither its members nor members of the Association Union. On an objection being raised subsequently respondents Nos. 4 to 6 were added as defendants Nos. 3 to 5 to represent the 27 disputed workmen.

4. Respondents Nos. 1 and 2 in their plaint chiefly based their claim on the memorandum of settlement dated December 31, 1966 which on being acted upon had become a condition of service not only of the members of the Sabha Union but also of other who were not its members. Their assertion was that the other settlement arrived at between the company and the Association Union under Section 18 (1) of the Industrial Disputes Act, 1947 - hereinafter referred to as the Act, was not binding on those workmen who were not its members. They attacked the second agreement as having been arrived at without following the mandatory requirement of Section 9A of the Act. The first relief claimed in the suit was that the settlement dated January 9, 1971 was not binding on the plaintiffs and other concerned daily-rated and monthly-rated workmen of the motor production department who were not members of the association Union. The second relief was to ask for a decree of permanent injunction to restrain the appellant from enforcing or implementing the terms of the impugned settlement dated January 9, 1971. The appellant company and the other defendant-respondents filed their written statements and contested the suit. They asserted that all the workmen of the motor production department had impliedly accepted and acted upon the new settlement. They challenged the jurisdiction of the civil court to entertain the suit in relation to the dispute

which was an industrial dispute and further that in any view of the matter no decree for permanent injunction could be made.

5. The trial Court framed several issues for trial but curiously enough dropped many issues as not surviving in view of the stand taken on behalf of the plaintiffs' Counsel at the time of the trial of the suit. It was conceded on their behalf, and rightly too, that the agreement dated December 31, 1966 was settlement under Section 18 (1) of the Act. It could be binding only on the members of the Sabha Union and not on others. But since the suit was filed on behalf of the non-members also who were not members of either union and in a representative capacity the main basis of the suit being the agreement dated December 31, 1966 was given up, and it was stated on behalf of the plaintiffs that they did not wish to enforce that agreement. Hence many issues, according to the learned trial Judge did not survive for discussion and were dropped. One such issue No. 7 in relation to the requirement of the notice under Section 9A of the Act for effecting any change in the agreement dated December 31, 1966. Treating the incentive payments made on and from the year 1966 till 1970 as implied terms and condition of service, the trial Judge seems to have come to the conclusion that the change effected in January, 1971 was detrimental to and against the interests of the workmen. Due to some technical reasons the first relief of declaration was not granted. But holding that the court had jurisdiction to try the suit as it was a suit of a "civil nature for enforcement of rights of common and general law and consequently there is no question of the relief being claimed under the Industrial Dispute Act", it granted a sort of conditional decree of injunction restraining the appellant from enforcing or implementing the terms of agreement of January 9, 1971 against the workmen of its motor production department who are not members of the Association Union. The injunction, however, was not to operate in regard to any workmen who in writing accepted the terms of the impugned agreement or after the appellant took steps in accordance with law to make the agreement binding on workmen other than those who are not members of the Association Union. The decree for injunction was also to cease to be operative if the appellant gave any notice of change under section 9A of the Act on expiry of 3 months after the expiry of 21 days' notice given under the said provisions of law.

6. The company filed an appeal in the Bombay High Court to challenge the decision of the city civil court. The learned Single Judge of the High Court who heard the appeal following his decision in the civil revision filed by the other company which is appellant in the other appeal, sustained the jurisdiction of the civil court to entertain the suit and did not feel persuaded to interfere with it on merits. The company took the matter in a letters patent appeal but it met the same fate before a Division Bench of the High Court. On grant of special leave, the present appeal was filed.

7. The foremost and perhaps the only point, undoubtedly a vexed one, which falls for our determination is whether on the facts and in the circumstances of this case the civil court had jurisdiction to entertain the suit filed by respondent Nos. 1 and 2 against the appellant and respondent Nos. 3 to 6. Various English and Indian authorities were cited on the point on either side at the Bar and we shall endeavour to answer the question of law on appreciation of many such authorities. It may not be necessary to refer to all. Before we do so, we may very briefly refer to the relevant provisions of the Act.

8. The object of the Act, as its preamble indicates, is to make provision for the investigation and settlement of industrial disputes, which means adjudication of such disputes also. The Act envisages collective bargaining contracts between union representing the workmen and the management, a matter which is outside the realm of the common law or the India law of contract. The expression "industrial dispute" is defined in Section 2 (k) to say that :

> "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the condition of labour, or any person;

Section 2(p) gives the definition of the word "settlement" thus :

> "Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as many be prescribed and a copy thereof sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;.

Chapter II provides for the authorities under the Act, namely, for constitution of the works committee, boards of conciliation, courts of inquiry, labour courts, tribunals and national tribunals as also for appointment of conciliation officers. Different kinds of authorities having very varied and extensive powers in the matter of settlement and adjudication of industrial disputes have been constituted. Since the time of the earliest decisions of the Federal Court and the Supreme Court of India it has been recognized fully well that the powers of the authorities deciding industrial disputes under the Act are very extensive - much wider than the powers of a civil court while adjudicating a dispute which may be an industrial dispute. The labour courts and the tribunals to whom industrial disputes are referred by the appropriate governments under Section 10 can create new contracts, lay down new industrial policy for industrial peace, order reinstatement of dismissed workmen which ordinarily a civil court could not do. The procedure of raising an industrial dispute starts with the submission of charter of demands by the workmen concerned. The Conciliation Officer can be and is often made to intervene in the matter first. He starts conciliation proceedings under Section 12. If a settlement is arrived at during the course of the conciliation proceeding, it become binding on all workmen under Section 18(3) of the Act. If there is a failure of conciliation, the appropriate government is required to make a reference under Section 10(1) of the Act. The award published under Section 17(1) becomes final and cannot be called in question by any court in any manner whatsoever as provided in sub-section (2). Section 18(1) of the Act says :

> A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.
>
> Section 19(2) makes provision for terminating a settlement and provides that it shall continue to be binding until then. Section 29 provides for penalty for breach of settlement or award. The residuary punishing section for contravention of any provisions of the Act or the Rules made thereunder is Section 31(2). The conditions of service applicable to workmen cannot be changed to their prejudice in regard to any matter connected with the dispute during the pendency of any conciliation proceeding or any proceeding before the Labour Court or the Tribunal as provided in Section 33(1)(a). Section 33C(1) provides for recovery of money due from an employer. The scope of sub-section (2) as to the power of Labour Court for the purpose of determination of the amount due is much wider than the power of Government under sub-section (1).

9. It would thus be seen that through the intervention of the appropriate government, of course not directly, a very extensive machinery has been provided for settlement and adjudication of industrial disputes. But since an individual aggrieved cannot approach the Tribunal or the Labour Court directly for the redress of his grievance without the intervention of the government, it is legitimate to take the view that the remedy provided under the Act is not such as to completely oust the jurisdiction of the civil court for trial of industrial disputes. If the dispute is not an industrial dispute within the meaning of Section 2(k) or within the meaning of Section 2A of the Act, it is obvious that there is no provision for adjudication of such disputes under the Act. Civil courts will be the proper forum. But where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the civil court. It is plain that he can't have both. He has to choose the one or the other. But we shall presently show that the civil court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act. In that event civil court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account of the alleged breach of contract if the contract is one which is recognized by and enforceable under the Act alone.

10. In Doe v. Bridges ((1831) 1 B & Ad 847 : 9 LJ OS KB 113 : 199 ER 1001) at page 859 are the famous and oft-quoted words of Lord Tenterden, C. J. saying :

> Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner.

This passage was cited approval by the Earl of Halsbury, L. C. in Pasmore v. Oswaldtwistle Urban District Council (1898 AC 387 : 67 LJ QB 635 : 14 TLR 368) and by Lord Simonds at page 407 in the case of Cutler v. Wandsworth Stadium Ltd. (1949 AC 398 : (1949) 1 ALL ER 544). Classic enunciation of the law and classification of the cases in three classes was done by Willes, J. "with the precision which distinguished the utterances of that must accomplished lawyer, in the case of Wolverhampton New Waterworks Co. v. Hawkesford ((1859) 6 CB (NS) 336 : 28 LJ CP 242 : 141 ER 486)" (vide the speech of Viscount Haldane at page 391 in the case of Neville v. London "Express", Newspaper, Ltd. (1919 AC 368 : 88 LJ KB 282 : 35 TLR 167 (HC)). The classes are enumerated thus :

> There are three classes of cases in which a liability may be established by statute. There is that class where there is a liability existing at common law, and which is only re-enacted by the statute with a special form of remedy; there, unless the statute contain words necessarily excluding the common law remedy, the plaintiff has his election of proceeding either under statute or at common law. Then there is a second class, which consists of those cases in which a statute has created a liability, but has given no special remedy for it; there the party may adopt an action of debt or other remedy at common law to enforce it. The third class is where the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it .... With respect to that class it has always been held, that the party must adopt the form of remedy given by the statute.

11. The judgment of the Court of Appeal which was affirmed by the House of Lords in Pasmore's

case (supra) is reported in Peebles v. Oswaldtwistle Urban District Council ((1897) 1 QB 625 : 65 LJ QB 392). It was pointed out that the duty of a local authority, under Section 15 of the Public Health Act, 1875 to make such sewers as may be necessary for effectually draining their district for the purposes of the Act, cannot be enforced by action for a mandamus, the only remedy for neglect of the duty being that given by Section 299 of the Act by complaint to the Local Government Board. Lord Esher, M. R. pointed out that the liability to make sewers was imposed by the statute. There was no such liability before it. The case, therefore, comes within the canon of construction that if a new obligation is imposed by statute, and in the same statute a remedy is provided for non-fulfilment of the obligation, that is the only remedy. Lopes L. J. further succinctly pointed out that Section 15 did not create any duty towards any particular individual, and Section 299 gives a specific remedy for the benefit of the locality at large. Thus, it should be noticed, that the obligation imposed by the statute did not result in creation of any right in favour of any particular individual. Earl of Halsbury, L. C. pointed out in his speech at page 394 :

> The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.

The matter would be different if the obligation imposed under the statute brings into existence a right in favour of an individual but provides no remedy for its enforcement. Supposing after providing for awarding of certain compensation in Chapter VA of the Act there was no provision made in it like Section 10 or Section 33C the mere penal provision for violation of the obligation engrafted in Section 29 or Section 31 would not have been sufficient to oust the jurisdiction of the civil court for enforcement of the individual right created under Chapter VA.

12. The decision of the House of Lords in the case of Barraclough v. Brown (1897 AC 615 : 65 LJ QB 672 : 13 TLR 527) is very much to the point. The special statute under consideration there gave a right to recover expenses in a court of summary jurisdiction from a person who was not otherwise liable at common law. It was held that there was no right to come to the High Court for a declaration that the applicant had a right to recover the expenses in a court of summary jurisdiction. He could take proceedings only in the latter court. Lord Herschell after referring to the right conferred under the statute "to recover such expenses from the owner of such vessel in a court of summary jurisdiction" said at page 620 :

> I do not think the appellant can claim to recover by virtue of the statute, and at the same time insist upon doing so by means other than those prescribed by the statute which alone confers the right.

Lord Watson said at page 622 :

The right and the remedy are given uno flatu, and the one cannot be dissociated from the other.

In other words if a statute confers a right and in the same breath provides for a remedy for enforcement of such right the remedy provided by the statute is an exclusive one. But as notice by Lord Simonds in Cutler v. Wandsworth Stadium Ltd. (supra) at page 408 from the earlier English cases, the scope and purpose of a statute and in particular for whose benefit it is intended has got to be considered. If a statute intended to compel mine owners to make due provision for the safety of the men working in their mines, and the persons for whose benefit all these rules are to be enforced are the persons exposed to danger, there arise at common law a co-relative right in these persons

who may be injured by its contravention.

Such a type of case was under consideration before Lord Goddard, C. J. in the case of Solomons v. R. Gertzenstein Ltd ((1954) 2 WLR 823 : (1954) 1 ALL ER 1008). vide page 831. Lord Denning, M. R. relied upon the principles enunciated by Lord Tenterden in Doe v. Bridges (supra) approved in Pasmore's case (supra) at page 743 in the case of Southwark London Borough Council v. Williams ((1971) 1 Ch 734 : (1971) 9 WLR 467). The celebrated and learned Master of the Rolls said at page 743 :

> Likewise here in the case of temporary accommodation for those in need. It cannot have been intended by Parliament that every person who was in need of temporary accommodation should be able to sue the local authority for it : or to take the law into his own hands for the purpose.

13. Mr. Sorabjee endeavoured to take his case out of the well established and succinctly enunciated principles of law by the English courts on two grounds :

> (1) That the remedy provided under the Act is no remedy in the eye of law. It is a misnomer. Reference to the Labour Court or an Industrial Tribunal for adjudication of the industrial dispute was dependent upon the exercise of the power of the Government under Section 10(1). It did not confer any right on the suitor.
>
> (2) Even if the civil court had no jurisdiction to entertain a suit for enforcement of a right created under the Act, as in England, courts in India also could make an order or decree for injunction to prevent the threatened injury on breach of the right.

14. We do not find much force in either of the contentions. It is not doubt true that the remedy provided under the Act under Section 33C, on the facts and in the circumstances of this case involving disputes in relation to the two settlement arrived at between the management and the workmen, was not the appropriate remedy. It is also true that it was not open to the workmen concerned to approach the Labour Court or the Tribunal directly for adjudication of the dispute. It is further well-established on the authorities of this Court that the Government under certain circumstances even on the ground of expediency (vide State of Bombay v. K. P. Krishnan ((1961) 1 SCR 227 : AIR 1960 SC 1223 : (1960) 2 LLJ 592)and Bombay Union of Journalists v. State of Bombay) ((1964) 6 SCR 22 : AIR 1964 SC 1617 : (1964) 1 LLJ 351) can refuse to make a reference. If the refusal is not sustainable in law, appropriate directions can be issued by the High Court in exercise of its writ jurisdiction. But it does not follow from all this that the remedy provided under the Act is a misnomer. Reference of industrial disputes for adjudication in exercise of the power of the Government under Section 10(1) is so common that it is difficult to call the remedy a misnomer or insufficient or inadequate for the purpose of enforcement of the right or liability created under the Act. The remedy suffers from some handicap but is well compensated on the making of the reference by the wide powers of the Labour Court or the Tribunal. The handicap leads only to this conclusion that for adjudication of an industrial dispute in connection with a right or obligation under the general or common law and not created under the Act, the remedy is not exclusive. It is alternative. But surely for the enforcement of a right or an obligation under the Act the remedy provided uno flatu in it is the exclusive remedy. The Legislature in its wisdom did not think it fit and proper to provide a very easy and smooth remedy for enforcement of the rights and obligations created under the Act. Persons wishing the enjoyment of such rights and wanting its enforcement must rest content to secure the remedy provided by the Act. The possibility that the

Government may not ultimately refer an industrial dispute under Section 10 on the ground of expediency is not a relevant consideration in this regard.

15. Mr. Sorabjee very emphatically relied upon the judgment of Farwell, J. in the case of Stevens v. Chown ((1901) 1 Ch 894 : 70 LJ Ch 571 : 17 TLR 313) in support of his submission that even if a suit could not lie in a civil court for enforcement of the right, still the remedy of injunction by a suit was not lost. The learned Judge at page 903 in the first instance pointed out that the case before him fell within the first of the three classes enumerated by Willes, J. in the case of Wolverhampton (supra). On the true construction of the Act under consideration it was opined that it had simply reenacted the old common law right to the market. But then the learned Judge proceeded to say at page 904 that the remedy in chancery, as a separate remedy, was wider than the old common law remedy. Says the learned Judge further at page 904 :

> In may opinion, there was nothing to prevent to old Court of Chancery from granting an injunction to restrain the infringement of a newly created statutory right, unless the Act of Parliament creating the right provided a remedy which it enacted be the only remedy - subject only to this, that the right so created was such a right as the court under its original jurisdiction would take cognizance of.

On a close scrutiny, however, it would be noticed that the principle of separate remedy only for the purpose of injunction available in a Court of Chancery, which was kept intact even after the Judicature Act of 1873 is not applicable in India. Historically the Chancery Court had assumed certain special jurisdiction under its original jurisdiction to take cognizance of a special kind of right even though the common law court may not have such jurisdiction. In India under Section 9 of the Code, the courts have subject to certain restrictions, jurisdiction to try suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. There are no different systems of civil courts for enforcement of different kinds of rights. In the instant case taking cognizance of a suit in relation to an industrial dispute for the enforcement of any kind of right is not expressly barred. But if it relates to the enforcement of a right created under the Act, as stated above, by necessary intendment, the jurisdiction of the civil courts is barred. That being so, in India, it is barred for all purposes, except in regard to matters which will be alluded to hereinafter. The position will be further clear on reference to the quotation from the decision of Lord Turner in the Judgment of Farwell, J. at pages 904 and 905 from the case of Emperor of Austria v. Day ((1861) 3 DF & J 217, 253). The great Master of Equity in relation to the remedy in the Chancery Court said :

> I do not agree to the proposition that there is no remedy in this Court if there be no remedy at law, and still less do I agree to the proposition that this Court is bound to send a matter of this description to be trial at law ..... It is plain therefore, that, in the opinion of Lord Redesdale, who was pre-eminently distinguished for his knowledge of the principles of this Court, the jurisdiction of the Court is not limited to cases in which there is a right at law.

It will bear repetition to say that the jurisdiction of the civil court in India is limited to cases in which there is a right at law, that is to say, a right to be pursued in such court.

16. The distinction aforementioned also funds ample support from the speech of Lord Davey in Barraclough v. Brown (supra). At page 623 the noble and learned Lord has pointed out that the power of the Court of Chancery to make declarations of right without giving consequential relief was introduced by Section 50 of the Chancery Procedure Act 1852. After some decisions of the

English courts some additional words were introduced in order to enlarge the power of the Court to make declarations in cases where from the nature or the circumstances of the case no substantive relief could be given by the Court.

When we proceed to deal with certain decision of the Privy Council and of this Court in relation to a taxing statute it will be pointed out under what circumstances an action in a civil court can lie to challenge the decisions of the taxing authorities. If the proposed action of the taxing authority is of a kind which when taken would be amenable to be challenged in a civil court the remedy for the relief of injunction to prevent the action would also lie but not otherwise. As for example, in accordance with majority decision of this Court in the case of K. S. Venkataraman & Co. v. State of Madras ((1966) 2 SCR 229 : AIR 1966 SC 1089 : (1966) 60 ITR 112) if tax is imposed under a provision of the statute which is ultra vires, the imposition can only be challenged by pursuing a remedy in a civil court or in High Court. Suppose a case where a proceeding is initiated by issuance of a notice for imposing a tax on a person under a provision of law which is ultra vires, a suit for injunction would lie to prevent the threatened action. But a suit, unlike the remedy in a Chancery Court, merely for the purpose of injunction would not lie to prevent an action which when completed cannot be challenged in a civil court.

17. Reliance was placed on behalf of the contesting respondents on the case of Carlton Illustrators v. Coleman & Company, Limited ((1911) 1 KB 771 : 80 LJ KB 510 : 27 TLR 65). This case merely illustrates the distinction already made by us. Channel, J. has said at page 782 :

> The plaintiff also asks for an injunction to prevent the future commission of breaches of this statutory enactment. It was argued, though not very strenuously, that the only remedy was the recovery of the penalty. I think that this case comes within the rule that, where there is a statutory enactment in favour of a person, and there is a penalty for the breach of the statutory enactment which goes to the person aggrieved, in such a case the penalty is the only remedy for the breach. That principle, however, only applies to remedies for the breach which has been committed, and an injunction is not a remedy for the past breach, but is a means for preventing further breaches.

18. Reliance was also placed on behalf of the contesting respondents on the decision of the House of Lords in PYX Granite Co. Ltd. v. Ministry of Housing and Local Government (1960 AC 260) but the decision is of no help to them. Viscount Simonds at pages 286 and 287 has said with reference to the Act of 1947 which was under consideration before the House that the Act provides a person with another remedy and then the question posed is - "Is it, then, an alternative or an exclusive remedy ?" Answer given is :

> There is nothing in the Act to suggest that, while a new remedy, perhaps cheap and expeditious, is given, the old and, as we like to call it, the inalienable remedy of Her Majesty's subjects to seek redress in her courts is taken away. And it appears to me that the case would be unarguable but for the fact that in Barraclough v. Brown (supra) upon a consideration of the statute there under review it was held that the new statutory remedy was exclusive. But that case differs vitally from the present case.

The well-known distinction is brought about in these terms :

> The appellant company are given no new right of quarrying by the Act of 1974.

> Their right is a common law right and the only question is how far it has been taken away. They do not uno flatu claim under the Act and seek a remedy elsewhere. On the contrary, they deny that they come within its purview and seek a declaration to that effect. There is, in my opinion, nothing in Barraclough v. Brown (supra) which denies them that remedy, if it is otherwise appropriate.

19. Mr. Sorabjee cited the case of Duchess of Argyll v. Duke of Argyll ((1967) 1 Ch 302) to strengthen his argument further in support of the dicta of Farwell, J. in case of Stevens v. Chown (supra). But we think the very relevant and pertinent distinction pointed out by us above has again been missed by the learned Counsel. The special jurisdiction of the Court of Chancery is further emphasised in a passage quoted with approval at page 345 of the report from the judgment of North, J. in the case of Pollard v. Photographic Company ((1888) 40 Ch D 345 : 58 LJ Ch 251 : 5 TLR 157). It is worthwhile to quote a portion of that passage which reads thus :

> But it is quite clear that, independently of any question as to the right at law, Court of Chancery always had an original and independent jurisdiction to prevent what that court considered and treated as a wrong, whether arising from a violation of an unquestionable right or from breach of contract or confidence, as was pointed out by Lord Cottenham in Prince Albert v. Strage (1 H & T 1).

Ungoed Thomas, J. has thereafter said at page 345 :

> But these were cases dealing not with interlocutory injunctions but with final injunctions and it was the practice of the Court of Chancery to exercise a jurisdiction, which was not limited to the considerations governing final injunctions, for the purpose of granting interlocutory injunctions pending the trial of a legal right.

No such thing is permissible in India. As far back as 1952 it was pointed out by this Court in the case of State of Orissa v. Madan Gopal Rungta (1952 SCR 28 : AIR 1952 SC 12) that the High Court cannot make a direction under Article 226 of the Constitution for the purpose of granting interim relief only pending the institution of a suit merely because the suit could not be instituted until after the expiry of 60 days from the date of a notice under Section 80 of the Code. Much less it can be so done by a civil court.

20. Mr. Sorabjee very strongly relied upon the Full Bench decision of the Lahore High Court in Municipal Committee, Montgomery v. Master Sant Singh (AIR 1940 Lah 377 : ILR 40 Lah 707 : 191 IC 65) in support of the plaintiff-respondents' right to have an order of injunction in this case. But a passage occurring at page 388 column I negatives his contentions and squarely supports the distinction drawn by us above. The passage runs thus :

> If therefore a demand made by a committee is not authorised by the Act and the person affected thereby objects to the payment on the ground that in making the demand the committee was exercising a jurisdiction not vested in it by law, it can, by no stretch of language, be said that he is objecting to his liability to be taxed under the Act. Any special piece of legislation may provide special remedies arising therefrom and may debar a subject from having recourse to any other remedies, but that bar will be confined to matters covered by the legislation and not to any extraneous matter.

21. We now proceed to consider the cases creating special liability, mostly tax liability, providing for procedures and remedies for determination of the amount of tax and relief against the assessment of such liability. In the well-known decision of the Privy Council in Secretary of State, represented by the Collector of South Arcot v. Mask and Company (67 IA 222 : AIR 1940 PC 105 : 188 IC 231) Lord Thankerton delivering the judgment of the Board alluded to the third class of cases to be found in the judgment of Willes, J. in Wolverhampton's case (supra). The order of the Collector of Customs passed on the appeal under Section 188 of the Sea Customs Act, 1878 was held to be an order within his exclusive jurisdiction excluding the jurisdiction of the Court to challenge it. The other well-known decision of the Privy Council is the case of Raleigh Investment Coy. Ltd. v. Governor General in Council (74 IA 50 : AIR 1947 PC 78 : 231 IC 1). Both the decisions aforesaid were noticed by Gajendragadkar, J., as then was, delivering the judgment on behalf of the Constitution Bench of this Court in Firm and Illuri Subbayya Chetty and Sons v. State of A. P. ((1964) 1 SCR 752 : AIR 1964 SC 322 : (1963) 50 ITR 93). At page 763 the circumstances under which the decision of the taxing authority under the Madras General Sales Tax Act, 1939 could be challenged in a civil court were pointed out in these terms :

> Non-compliance with provisions of the statute to which reference is made by the Privy Council must, we think, be non-compliance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate authority has acted in violation of the fundamental principles of judicial procedure, that may also tend to make the proceedings illegal and void and this infirmity may affect the validity of the order passed by the authority in question. It is cases of this character where the defect or the infirmity in the order goes to the root of the order and makes it in law invalid and void that these observations may perhaps be invoked in support of the plea that the civil court can exercise its jurisdiction notwithstanding a provision to the contrary contained in the relevant statute. In what cases such a plea would succeed it is unnecessary for us to decide in the present appeal because we have no doubt that the contention of the appellant that on the merits, the decision of the assessing authority was wrong, cannot be the subject-matter of a suit because Section 18-A clearly bars such a claim in the civil courts.

It would be noticed on appreciation of the above dicta that the issue to be tried in the suit instituted in a civil court to challenge the decision of the taxing authorities is quite distinct and different from the one which is within their exclusive jurisdiction. The issues in the two proceedings are different and exclusive in their respective spheres. Many authorities were reviewed by Subba Rao, J., as he then was, in the case of Firm Seth Radha Kishan (deceased) represented by Hari Kishan v. Administrator, Municipal Committee, Ludhiana ((1964) 2 SCR 273 : AIR 1963 SC 1547 : (1963) 50 ITR 187) including the principles enunciated by Willes, J. in Wolverhampton's case (supra). The decision of the Full Bench of the Lahore High Court [Municipal Committee, Montgomery v. Master Sant Singh] was also referred, and the final principle enunciated is to be found at page 284 in these terms :

> Under Section 9 of the Code of Civil Procedure the Court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. A statute, therefore, expressly or by necessary implication, can bar the jurisdiction of civil courts in respect of a particular matter. The mere conferment of special jurisdiction on a respect of the said matter does not in itself include the jurisdiction of civil courts. The statute may specifically provide for ousting the

> jurisdiction of civil courts; even if there was no such specific exclusion, if it creates a liability not existing before and gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular forum in which the said remedy could be had. Even in such cases, the civil court's jurisdiction is not completely ousted. A suit in a civil court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions.

The principles aforesaid were reiterated in the decision of this Court in Bharat Kala Bhandar Ltd. v. Municipal Committee, Dhamangaon ((1965) 3 SCR 499 : AIR 1966 SC 249 : (1966) 59 ITR 73) albeit the learned Judges by 3 : 2 differed in the application of the principle to the facts of the case.

22. The unanimous decision of a Bench of 7 Judges of this Court was given by Gajendragadkar, C. J. in the case of Kamala Mills Ltd. v. State of Bombay ((1966) 1 SCR 64 : AIR 1965 SC 1942 : (1965) 57 ITR 643). The decision of the House of Lords in the case of PYX Granite Co. Ltd. (supra) was referred to at page 81 after referring to the decisions of the Privy Council in the case of Mask & Co. (supra) and the principles were reiterated at page 82. A doubt which was being cast in the full application of the ratio of the Privy Council in Raleigh Investment Co.'s case (supra) was crystallised in the majority decision of Subba Rao, J. in the case of K. S. Venkataraman & Co. v. State of Madras (supra). The minority decision of Shah, J. was to the contrary. The majority view made a departure from the dicta of the Privy Council in case of a challenge to assessment of tax made under ultra vires provisions of the law. The decision of this Court in State of Kerala v. Ramaswami Iyer & Sons ((1966) 3 SCR 582 : AIR 1966 SC 1738 : (1966) 61 ITR 187) is again in connection with the challenge to sales tax assessment by institution of a suit in civil court. Mitter, J. reviewed many decisions of this Court in the case of Pabbojan Tea Co. Ltd. v. Deputy Commissioner, Lakhimpur ((1968) 1 SCR 260 : AIR 1968 SC 271 : (1967) 2 LLJ 872) - a case arising out of a challenge to the orders of the authority under the Minimum Wages Act. Sub-section (6) of Section 20 of the Act was held not to exclude the jurisdiction of the civil court when the order of the authority is challenged on the ground of non-applicability of the Act to a certain class of workers Hidayatullah, C. J. delivering the judgment on behalf of Constitution Bench of this Court took pains to discuss many authorities in case of Dhulabhai v. State of M. P. ((1968) 3 SCR 662 : AIR 1969 SC 78 : (1968) 22 STC 416) culled out as many as 7 propositions of law at pages 682 and 683. But the principles enunciated were relevant to find out of the jurisdiction of the civil court and its scope to challenge the assessment made under a taxing statute. Nothing contrary to what we have said above is to be found in any of the 7 principles enunciated by the learned Chief Justice. The case of Union of India v. A. V. Narasimhalu ((1970) 2 SCR 145 : (1969) 2 SCC 658) was again in regard to exclusion of jurisdiction of the civil court in a suit to challenge an order under Section 188 of the Sea Customs Act, 1878.

23. To sum up, the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute may be stated thus :

> (1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.
>
> (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is

alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

24. We may, however, in relation to principle No. 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of Section 2 (k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal or an unsponsored workmen which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle No. 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle No. 3 stated above.

25. Some of the decision of the High Courts in India cited at the Bar may now be briefly noticed. They fall in one category or the other and have expressed divergent views. Those which have taken any view contrary to the one expressed by us above must be deemed to have been overruled in that regard and those falling in line with our views are being affirmed.

26. In the case of Krishnan v. East India Distilleries and Sugar Factories Ltd., Nellikuppam ((1964) 1 LLJ 217 : AIR 1964 Mad 81), the learned Single Judge of the Madras High Court has held that the jurisdiction of the civil court is ousted impliedly to try a case which could from subject-matter of an industrial dispute collectively between the workmen and their employer. One of us (Alagiriswami, J) as a Judge of the Madras High Court in the case of Madura Mills Company, Ltd. v. Guruvammal ((1933) 2 LLJ 397 : (1967) 2 Mad LJ 287) has pointed out that the Act creates a special machinery under Section 33C(2) to enforce specially created rights. The parties could not, therefore, approach the ordinary civil court. We affirm the aforesaid two decision of the Madras High Court. A Single Judge of the Mysore High Court took the same view in the case of the Nippani Electricity Company (Private) Ltd. (by its director, V. R. Patravali) v. Bhimarao Laxman Patil ((1969) 1 LLJ 268 : 1968 Lab IC 1571 (Mys)) and a Bench of the Bombay High Court in Pigment Lakes and Chemical Manufacturing Co. Private Ltd. v. Sitaram Kashiram Konde (71 Bom LR 452 : 1970 Lab IC 115 (Bom)) held that the jurisdiction of the civil court to deal with matters mentioned in Chapter VA read with Schedules 2 to 4 the Act is impliedly barred. Similar opinion was expressed by a learned Single Judge of the Kerala High Court in the case of Nanoo Asan Madhavan v. State of Kerala ((1970) 1 LLJ 272 : 1967 Ker LT 531). A learned Single Judge of the Calcutta High Court seems to have taken a somewhat different view in the case of Bidyut Kumar Chatterjee v. Commissioners for the Port of Calcutta ((1970) 2 LLJ 148 : 1971 Lab IC 708 (Cal)). The ratio of the case in so far as it goes against the principles enunciated by us is not correct. We approve what has been said by a Bench of the Calcutta High Court in the case of M/s. Austin Distributors Pvt. Ltd. v. Nil Kumar Das (1970 Lab IC 323 (Cal)) that a suit for recovery of damages for wrongful dismissal, on the grounds which are clearly entertainable in civil court, would lie in that court even though a special remedy is provided in the Act in respect of that matter. This would be so on the footing that the dismissal was

in violation of the contract of service recognized under the general law. More or less to the same effect is the view taken by a learned Single Judge of the Mysore High Court in the case of Syndicate Bank v. Vincent Robert Lobo ((1971) 2 LLJ 46 : 1971 Lab IC 1055 (Mys)). It is not necessary to refer to some unreported decisions of the Bombay High Court taking one view or the other.

27. Applying the principles aforementioned to the facts of the instant case, it is clear that what the plaintiff-respondents wanted to prevent was, by and large, threatened breach of their right which flowed from the agreement dated December 31, 1966 entered into between the Sabha Union and the company. Such a collective agreement is recognized and creates a right in favour of the members of the union only under Section 18 (1) of the Act and not under the general law of contract. Withdrawal of the claim based upon the said agreement by their learned Counsel in the trial Court had no effect on the question of its jurisdiction to try the suit. In so far as the suit was filed in a representative capacity on behalf of the members of the Sabha Union by two of its members under Order 1, Rule 8 of the Code it was clearly a suit in relation to the exercise of right created under the Act. In their case it was not permissible to fall back upon the allegedly implied terms and conditions of service. The source of their right was the agreements entered from time to time under Section 18 (1) of the Act culminating in the agreement dated December 31, 1966. It is reasonable to take the view that even the workmen who were not members of the Sabha Union but were given the benefit of incentive payments under the said agreement were so given because they tacitly agreed to be bound by the said agreement. Even accepting that in their case it had assumed the character of an implied term of contract of service, the alternative claim made in paragraph 8 of the plaint as being a condition of service otherwise, can be referable to the claim of the non-members only. The source of their right in that event was different and a representative suit on their behalf by the two plaintiff's could not be maintained. The numerous person must have the same interest in one suit instituted under Order 1, Rule 8 of the Code. Persons having different interests cannot be so represented. The better and more reasonable view, therefore, to take is that all workmen represented by the two plaintiffs sought an order of injunction in the civil court to prevent an injury which was proposed to be caused to them in relation to their right under the Act. Hence a suit for a decree for permanent injunction was not maintainable in the civil court as it had no jurisdiction to grant the relief or even a temporary relief.

28. Although the issue as to the non-compliance with the requirements of Section 9A of the Act was dropped, the learned trial Judge seems to have found that the proposed change in the conditions of service was adverse to the interest of the workmen. Whether it was so or not is a matter of debate. But one thing was apparent that both the agreements could not be simultaneously given effect to. It was impracticable - almost impossible to do so. The result of the order of injunction made by the trial Court was that the workmen represented by the two plaintiff's were to get incentive payments in accordance with the scheme embodied in the agreement dated December 31, 1966 ignoring the addition to the strength of the workmen of the motor production department in the shape of the 27 persons. On the other hand the members of the Association Union who had entered into the second agreement dated January 9, 1971 were to get their incentive payments in accordance with that agreement taking into account the contribution made in the matter of production by the newly added 27 persons. On the face of it, it was an attempt to put two swords in one sheath. That it was not only difficult but almost impossible to do so was conceded on all hands, including Mr. Sorabjee, learned Counsel for the plaintiff-respondents. Apart from the question of jurisdiction the decree of induction was not sustainable on this account too. The dispute could well be decided from all aspects in a reference under the Act.

29. One more difficulty in the way of the sustainability of the order of injunction may also be

indicated. Temporary injunction can be granted under sub-section (1) of Section 37 of the Specified Relief Act, 1963 but a decree for perpetual injunction is made under sub-section (2). Grant of perpetual injunction is subject to the provision contained in Chapter 8. Under Section 38 (1) a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour irrespective of the fact whether the obligation arises at common law, under a contract or under a special statute (subject to the point of jurisdiction). But sub-section (2) provides that when any such obligation arise out of contract the courts shall be guided by the rules and provisions contained in Chapter 2. Section 14 (1)(c) occurring in that chapter says that a contract which is in its nature determinable cannot be specifically enforced. The contract in question embodied in the written agreement dated December 31, 1966 was in its nature determinable under Section 19(2) of the Act or could be varied by following the procedure under Section 9A. Section 41 (e) of the Specific Relief Act says that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced. Section 42 providing an exception to this is not attracted in this case. The decree or order of injunction made therein, therefore, is not sustainable on this account too.

30. We now proceed to briefly state the facts of Civil Appeal No. 2317/1972. During the pendency of an industrial dispute in I. T. No. 139 of 1965, 46 workmen of appellant company were sought to be dismissed and an application for according approval to the dismissal was made under Section 33 (2) of the Act. On March 14, 1968 a settlement was reached between the Engineering Mazdoor Sabha Union, plaintiff No. 1, the same Sabha Union as in the other case, and the company. A written agreement was executed according to which the parties agreed to refer their cases to a Board of Arbitrators consisting of 3 persons. During the pendency of the arbitration the 46 workmen were to remain suspended from work till its decision. They were to be paid from the date of resumption of work by the other workmen, 50% of their wages which they would have normally earned had they not been so suspended. On November 14, 1971 the appellant company served a notice on the union, plaintiff No. 1 in writing seeking to terminate the settlement in accordance with Section 19 (2) of the Act. Thereupon the union and two of their members instituted the suit on December 14, 1971 challenging the action of the company on several grounds and prying for an order on injunction to restrain the company from committing a breach of the agreement dated March 14, 1968 including the breach as regards the payment of 50% wages to the 46 workmen. It may be stated that the company's nominee on the Board of Arbitrator had withdrawn. A prayer, therefore, was made in the plaint of direct the company to appoint its nominee in place of Mr. Karnik who had withdrawn. The company asked the City Civil Court of Bombay, were the suit was instituted, to decided the question of jurisdiction of the court to entertain the suit as a preliminary issue. The court held against the company. It went up in revision before the Bombay High Court. The same learned Judge sitting singly who later on decided the other case upheld the jurisdiction of the civil court to try the suit. The company field this appeal by special leave.

31. On the facts of this case it is all the more clear that the civil court has no jurisdiction to try it. The manner of voluntary reference of industrial disputes to arbitration is provided in Section 10A of the Act. The reference to arbitration has to be on the basis of a written agreement between the employer and the workmen. As provided in sub-section (5) nothing in the Arbitration Act, 1940 shall apply to arbitrations under Section 10A of the Act. There is no provision in the Act to compel a party to the agreement to nominate another arbitrator if its nominee has withdrawn from arbitration. The company had terminated the agreement dated March 14, 1968 under Section 19(2) of the Act. On the authority of this Court in South Indian Bank Ltd. v. A. R. Chacko ((1964) 5 SCR 625 : AIR 1964 SC 1522 : (1964) 1 LLJ 19) Mr. Iyer endeavoured to argue that in spite of the termination of the agreement it still continued to be in force. Apart from the fact that the decision of

this Court was with reference to the termination of the award under Section 19, it is clear that the termination of the agreement in this case was not accepted by the union. It sought to challenge it by the institution of a suit. It is clear that the suit was in relation to the enforcement of a right created under the Act. The remedy in civil court was barred. The only remedy available to the workmen concerned was the raising of an industrial dispute. It was actually raised, and, as a matter of fact, shortly after the institution of the suit the disputes were referred by the Government to the Industrial Tribunal in I. T. No. 33 of 1972 on January 25, 1972.

32. For the reasons stated above both the appeals are allowed, the judgments and orders of the courts below are set aside. But in the circumstances we shall make no order as to costs in either of the appeals.

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